

PUBLIC SAFETY AND CRIMINAL JUSTICE COMMITTEE

DATE: July 22, 2015

CALLED TO ORDER: 5:37 p.m.

ADJOURNED: 9:30 p.m.

ATTENDANCE

Attending Members

Mary Moriarty Adams, Chair
Stephen Clay
Aaron Freeman
Benjamin Hunter
Frank Mascari
William Oliver
Marilyn Pfisterer
Leroy Robinson
Christine Scales
Joseph Simpson

Absent Members

PROPOSAL NO. 128, 2015 - amends Sec. 279 of the Code regarding Police Merit Board member selection and the hiring, promoting and disciplining of police officers

"Postpone" until August 19, 2015

Vote: 10-0

PROPOSAL NO. 129, 2015 - amends Sec. 252 of the Code regarding the hiring, promoting and disciplining of firefighters and changing the provision for death leave for firefighters in the non-suppression division

"Do Pass as Amended"

Vote: 10-0

PROPOSAL NO. 219, 2015 - replaces the funding mechanism of Fiscal Ordinance No. 8, 2015 by appropriating \$4,700,000 in the 2015 Budget of the Department of Public Safety, IMPD (City Cumulative Capital Fund) and reducing the appropriation in the same amount from the IMPD General Fund

"Do Pass as Amended"

Vote: 9-1

Presentation on BlueIndy – Fred Biesecker, General Counsel and Bart Brown, Council Chief Financial Officer (CFO)

Presentation by Indianapolis Metropolitan Police Department (IMPD) Administration on the hiring process of minority officers – Lloyd Crowe, IMPD Deputy Chief

PUBLIC SAFETY AND CRIMINAL JUSTICE COMMITTEE

The Public Safety and Criminal Justice Committee of the City-County Council met on Wednesday, July 22, 2015. Chair Mary Moriarty Adams called the meeting to order at 5:37 p.m. with the following members present: Stephen Clay, Aaron Freeman, Benjamin Hunter, Frank Mascari, William Oliver, Marilyn Pfisterer, Leroy Robinson, Christine Scales, and Joseph Simpson. General Counsel, Fred Biesecker, Chief Financial Officer, Bart Brown, and Fiscal and Policy Analyst, Ryan Kramer represented Council staff.

PROPOSAL NO. 128, 2015 - amends Sec. 279 of the Code regarding Police Merit Board member selection and the hiring, promoting and disciplining of police officers

Councillor Freeman moved, seconded by Councillor Hunter, to “Postpone” Proposal No. 128, 2015, until August 19, 2015.

Chair Moriarty Adams stated that the proposal is very important; however, committee members are not happy with its continued postponements. She asked that Mr. Biesecker and Councillor Clay work with the Indianapolis Metropolitan Police Department (IMPD) Administration and the Fraternal Order of Police (FOP) to come up with something to present to the committee during the next committee meeting.

Councillor Clay agreed, stating that he wishes to ensure that the changes to the merit law are comprehensive and make sense for all involved parties.

Councillor Pfisterer stated that she is concerned that some of the changes may conflict with State Law and have some unintended consequences. She stated that she is hopeful that the issues are resolved during the discussions.

Councillor Oliver stated that he is reluctant to support the postponement; however, he is confident that no laws will be broken since Councillor Clay and Mr. Biesecker have been added to the discussion.

The motion carried by a vote of 10-0.

PROPOSAL NO. 129, 2015 - amends Sec. 252 of the Code regarding the hiring, promoting and disciplining of firefighters and changing the provision for death leave for firefighters in the non-suppression division

Ernest Malone, Indianapolis Fire Department (IFD) Chief, read through an explanation of the proposal (attached as Exhibit A), making the following key points:

- The proposed ordinance would:
 - Clarify age requirements for making application to be and hiring firefighters. The current ordinance states that in order to be hired, the applicant had to be between the ages of 21 and 35;

- The proposed ordinance states an individual may not submit an application, or be appointed or reappointed as a member of the department unless the individual is at least 21 years of age, but has not reached his or her 36th birthday.
- Add and restate employment preferences, including those required by State Law and describe the extent to which preferences can impact eligibility scores. Along with the two preferences of hiring military veterans who have been honorably discharged and being the child of a firefighter or police officer who died in the line of duty, two additional preferences have been added;
 - A person who successfully graduated from a City of Indianapolis or Marion County high school; and
 - A person who is a resident of Marion County as of the date the person submits an application for employment.
- Add language pertaining to continuity of hiring and promotion processes to enable IFD to have good and current lists for hiring and promotions;
 - A new applicant screening process shall be initiated by the department no later than 18 months after a final eligibility list is certified by the Merit Board.
- Provide for the consideration of community and legal obligations when the Chief is selecting candidates for hire that are not required to be in top 80% of final eligibility list;
 - In making the selections, the Chief shall consider candidates who, in the opinion of the Chief, are best qualified for appointment based on considerations, such as cumulative score on the merit selections procedures, and community and legal obligations of the department and the city.
- Modify promotion eligibility requirements to provide for increased time in grade before promotion, as recommended by IFD Career Development Committee and the Fire Merit Board;
 - To be eligible for promotion to the rank of Lieutenant, an individual must have completed eight years of continuous service as a member of the department.
 - To be eligible for promotion to the rank of Captain, an individual must have completed three years in the rank of Lieutenant and have completed 11 years of continuous service as a member of the department.
 - To be eligible for promotion to the rank of Battalion Chief, an individual must have completed three years in the rank of Captain and have completed 14 years of continuous service as a member of the department.
- Add language providing a sunset date for each final promotion eligibility list;
 - Final eligibility lists prepared as the result of a promotion process shall be in effect for three years or until a new eligibility list for the next process is final, whichever occurs sooner. A new promotion process shall be initiated by the department no later than 24 months after a final promotion list is certified by the Merit Board.
- Add language to give the Chief the ability to make certain staff appointments in the Suppression Division for those with specific specialized skills and knowledge;
 - The Chief of Fire may make staff appointments in the Suppression Division for positions requiring special certifications, skills and/or training. These

positions may include, but are not limited to, Emergency Medical Services (EMS) Duty Officers and Fire Investigators. These appointments shall not be made to circumvent the department's established seniority bidding or merit systems, which shall be adhered to in compliance with department general orders and labor agreements.

- Describe the process for addressing the issue of and integrating non-merit battalion commanders who are absorbed by IFD upon a consolidation with a township or other fire department;
 - Upon a consolidation of a fire department into IFD that results in the addition of a new battalion, any Merit Captain who was acting as a battalion commander for the fire department shall be allowed to remain as an acting Battalion Commander if he or she participates in the next process for promotion to Battalion Chief and successfully completes all components of that promotion process. If the acting Battalion Commander chooses not to participate in or does not successfully complete all components of that promotion process, he or she shall immediately vacate the acting Battalion Commander position.
- Modify the disciplinary procedure to reduce certain time frames by one day to match existing general orders; allow either the firefighter or the Chief to appeal a Merit Board decision; and to make certain changes to the provision for providing a transcript to the court if a Merit Board decision is appealed; and
- Make changes to the "Death Leave" ordinance to provide for additional bereavement leave time to firefighters in non-suppression division positions upon the death of certain close relatives. This change will make the time off provided roughly equivalent to the time off for this reason that is provided to firefighters in suppression positions.

Councillors Clay and Simpson commended the efforts of IFD in the modifications of the firefighters merit law.

Councillor Oliver asked if other grievances that come at a later date are added on to a grievance that has been resolved. Chief Malone responded in the negative, stating that once a grievance has been resolved, it is closed.

Councillor Hunter asked whether the modifications are in compliance with IC 36-8-3.5-1. Ellen Gabovitch, Assistant Corporation Counsel, Office of Corporation Council (OCC), affirmed, stating that the statute allows the ordinance to be amended.

Chair Moriarty Adams called for public testimony.

Mike Reeves, President of the Firefighters Union, Local 416, spoke in support of the proposal.

Councillor Simpson moved, seconded by Councillor Mascari, to "Amend" Proposal No. 129, 2015, as detailed in Exhibit B. The motion carried by a vote of 10-0.

Councillor Simpson moved, seconded by Councillor Oliver, to send Proposal No. 129, 2015, to the full Council with a "Do Pass as Amended" recommendation. The motion carried by a vote of 10-0.

PROPOSAL NO. 219, 2015 - replaces the funding mechanism of Fiscal Ordinance No. 8, 2015 by appropriating \$4,700,000 in the 2015 Budget of the Department of Public Safety, IMPD (City Cumulative Capital Fund) and reducing the appropriation in the same amount from the IMPD General Fund

Matthew Kimmick, Controller, Office of Finance and Management (OFM), stated that the Marion County Income Tax Council passed an increase of the Public Safety Income Tax (PST) to provide additional funding for public safety purposes. Earlier in the year, Proposal No. 22 was introduced to provide additional appropriations to various public safety and criminal justice agencies. The Council then introduced Proposal No. 47, 2015, which provided an additional \$4.7 million to IMPD. Money from the Fiscal Stability Fund was used to help support a recruit class and help with a fiscal deficit within the IMPD budget, having the intent to repay the money. However, the ratings agencies have been concerned with the restoration of the \$80 million balance. Of the balance, \$6.8 million was used for a recruit class in 2013 and an additional \$8 million was used for emergency road and street repair in 2014. As of June 30, 2015, \$8 million has been repaid, however the \$6.8 million has not. After reviewing various proposals, additional funding was available as a result of the PST increase, as well as knowing that approximately \$85 million of the County Option Income Tax (COIT) fund would be transferred to IMPD to help fund their budget, it was elected that the money would be transferred into the Fiscal Stability Fund to repay the \$6.8 million to let the ratings agencies know that they were serious and avoid a potential downgrade. Mr. Kimmick stated that OFM understands the needs identified by the Council, FOP, and the Department of Public Safety (DPS), and has provided an additional appropriation of City Cumulative Fund money in order to fund certain Capital Improvement projects and support the appropriation that was originally in Proposal No. 47, 2015, which will help address such needs for vehicles, the training academy, and the firing range.

Councillor Freeman stated that he does not understand how OFM transferred money without Council approval. He stated that he feels as though the law has been broke and wants money to stop being moved out of the County without Council approval.

Councillor Mascari asked whether the ratings agencies have given a statement saying that the City's rating will decrease once the Fiscal Stability Fund is repaid. Mr. Kimmick responded in the negative stating that it is only a speculation of the agencies.

Mr. Kimmick stated that the ordinance allows the Controller to identify revenues that are available for IMPD and transfer them into the Fiscal Stability Fund. Mr. Biesecker stated that the ordinance to which Mr. Kimmick is referring, Section 135-771(b) of the Municode, was written by him and former Controller, Jason Dudich, and states "On an annual basis, the Controller shall review annual city and county revenue, except property taxes, that is eligible for deposit to the IMPD General Fund and make a determination of the amount, if any, that can be transferred to the Fiscal Stability Fund to restore the amount of transfers made in preceding years...." Mr. Biesecker stated that the language does not state that the Controller

has the authority to make the transfer without Council approval, and the language states that the transfer is to be made on an annual basis and not in the middle of the year. Once the money is deposited into the IMPD General Fund, only the Council can take it out, not the Controller.

Councillor Simpson stated that the problem is that it seems like they are telling the taxpayers that money can be moved whenever Council wants. The taxpayers trusted that the money would be used for IMPD purposes and not for the Controller to move it to the Fiscal Stability Fund. He asked if there is a signed document stating that the Council agreed to repay the money. Mr. Kimmick stated that he was not a part of the budget negotiations. Councillor Simpson stated that the issue is very disturbing, as it is not what the taxpayers were told would be done with their tax money.

Councillor Freeman stated that an ordinance requesting a fund transfer should have come before the committee two months ago so that it could have been debated.

Councillor Mascari moved, seconded by Councillor Oliver, to "Amend" Proposal No. 219, 2015, as highlighted in Exhibit C.

Bart Brown stated that the amendment would reverse the transfer of \$6.8 million by the Controller from the Fiscal Stability Fund back to the IMPD General Fund, which will adjust the fund balance. It also leaves \$2.9 million in the City Cumulative Fund, which leaves in place emergency appropriations to be used in the event that the Vision Fleet contract is cancelled and the vehicles are taken.

Councillor Hunter asked Mr. Dudich whether the issue has been discussed in the Mayor's Office, assuming that the process was approved by the Mayor's Office, and then carried out by the Controller. Mr. Dudich, Chief of Staff, Office of Mayor Gregory Ballard, stated that in the 2013 budget discussions, there was a shortfall in the IMPD Fund that could have been filled by eliminating the local Homestead Credit. He stated that the, former Chief of Staff, Ryan Vaughn, Council President Maggie Lewis, and former Council CFO, Hope Tribble met and came to a compromise to put money from the Fiscal Stability Fund into the IMPD General Fund to pay for the deficit and an additional recruit class. He stated that they also discussed repaying the amount over an unspecified period of time based on the fund balances in the IMPD Fund. There is nothing in writing; however, there is a word between the Council and the Administration on repayment of the Fiscal Stability Fund. Councillor Hunter asked why the committee cannot wait until they find out whether the Vision Fleet contract will end before they transfer the money back to the IMPD Fund. Mr. Brown stated that the amount of time that it takes to introduce and pass a proposal will hold up the process. Councillor Hunter stated that holding \$2.9 million in an emergency fund that is dependent on a contract or possible law suit sets a dangerous precedent for the Council, as there is not stop gap to prevent spending the money elsewhere.

Councillor Freeman stated that this is a matter of priorities, adding that it infuriates him that the Administration is fine with spending \$32 million on electric vehicles, but has an issue with giving \$6.8 million to IMPD officers. He asked if the money can come from the

Downtown Tax Increment Financing (TIF). Mr. Kimmick stated that he does not believe the Downtown TIF would be an allowable expense to put money into a savings account. Councillor Freeman asked if there is more than \$6.8 million in the Downtown TIF fund balance. Mr. Kimmick affirmed. Councillor Freeman asked if the \$6.8 million has already been moved out the IMPD Fund and transferred into the Fiscal Stability Fund. Mr. Kimmick affirmed. Councillor Freeman stated that the issue is upsetting.

Councillor Hunter stated that he is concerned that the \$2.9 million that is proposed to be held in an emergency fund will not be used as intended since there is no specific allocation for it.

Councillor Clay stated that because there is a lack of trust in the Administrations, he would like the committee to reconsider the motion to amend the proposal, and not support or move the proposal out of committee.

Councillor Scales stated that the committee should discuss delaying the proposal, and take \$6.8 million of the Downtown TIF to be put in the IMPD General Fund.

Councillor Freeman stated that he agrees that the \$2.9 million should not be readily available and would prefer to only take the \$6.8 million back out of the Fiscal Stability Fund. Mr. Kimmick stated that he does not believe that it is an allowable expense, but the approval will need to come from the Metropolitan Development Commission (MDC).

Councillor Simpson suggested amending the amendment to keep \$4.7 million, but strike the \$2.9 million since there is no plan for its use.

Councillor Freeman suggested putting the entire \$6.8 million in the IMPD Fund and prohibiting the Administration from moving the money without Council approval.

Councillor Hunter suggested taking a recess to rewrite the amendment.

Councillor Mascari withdrew his amendment.

Chair Moriarty Adams called for recess at 7:13 p.m. The meeting reconvened at 7:32 p.m.

Mr. Brown read through the revised amendment (attached as Exhibit D), stating that the amendment transfers \$6.8 million from the Fiscal Stability Fund to the IMPD General Fund.

Councillor Simpson moved, seconded by Councillor Mascari, to "Amend" Proposal No. 219, 2015, as detailed in Exhibit C. The motion carried by a vote of 9-1, with Councillor Pfisterer casting the negative vote.

Councillor Pfisterer stated that that she thinks the money needs to come from a source other than the Fiscal Stability Fund.

Chair Moriarty Adams called for public testimony.

Rick Snyder, President of the Fraternal Order of Police (FOP), stated that there is still a need for the \$4.7 million that was initially given to IMPD in April. He added that none of the vehicles that are critically needed have been purchased out of the \$4.7 million. He asked that the purchasing process move forward so they are able to get the vehicles and fulfill other needs.

Councillor Simpson moved, seconded by Councillor Oliver, to send Proposal No. 219, 2015, to the full Council with a "Do Pass as Amended" recommendation. The motion carried by a vote of 9-1, with Councillor Pfisterer casting the negative vote.

[Clerk's note: Councillors Freeman, Pfisterer, and Robinson left at 7:40 p.m.]

Presentation on BlueIndy – Fred Biesecker, General Counsel, and Bart Brown, Council Chief Financial Officer (CFO)

Mr. Biesecker read through a presentation (attached as Exhibit E) making the following key points:

- After reviewing the local ordinances on right-of-way use, franchise agreements, and encroachment licenses, it is his view that the Mayor does not have the legal authority to grant an exclusive long-term franchise for car sharing services, such as BlueIndy.
- A solution is for BlueIndy to get a franchise agreement.
- The Council has the power to approve franchise agreements; however, Section 201(c) of the BlueIndy contract is contradictory of that.
- A municipality has no power to grant to a public service corporation an exclusive franchise to use the streets, unless the power not only to grant a franchise but also to grant an exclusive franchise has been delegated to it by the Legislature.
- The City has a 15-year contract with BlueIndy.
- The ultimate goal of the BlueIndy deal is to have 500 electric vehicles and 1,000 charging stations in 200 locations, which the City agreed to provide at no additional charge to BlueIndy.
- According to the contract, BlueIndy is exempt from paying local property taxes on real property that is located on City-owned property or City-controlled public right-of-way; parking taxes; and city fees charged by the Department of Code Enforcement. BlueIndy shall not be subjected to any tax imposed by the City or County that has the effect of applying only to BlueIndy or its business.
- The City is to deposit \$6 million into an escrow account for BlueIndy by September 1, 2015; reduce its profit sharing in years six through 15 of the contract; and entitle BlueIndy to the recovery of reasonable attorneys' fees and costs for any proceedings.
- Section 645-211 states "no person or entity shall indefinitely or permanently occupy a public right-of-way or use facilities within the public rights-of-way owned by others under lease or other arrangement with such owner, without first obtaining a public right-of-way user franchise granted by the consolidated city...."

- Section 645-221 states "The City-County Council is hereby authorized to grant one or more nonexclusive franchising contracts conveying the right to construct, operate, and maintain privately owned facilities occupying the public rights-of-way."
- Section 621-116(b) states "No person shall park a vehicle on any street or alley in the city for the primary purpose of displaying advertising of any nature."
- If and when BlueIndy achieves "profitability," defined as the point in time when the company's cumulative net profit from the effective date is positive, then the company pays 15% of its annual net profit to the city and Indianapolis Power and Light Company (IPL); however, the first \$4 million goes exclusively to IPL.

Mr. Brown stated that the \$6 million can legally be deposited into an escrow account as long as it stays a part of the City's funds; however, there have to be appropriations for the \$6 million.

Councillor Mascari asked if the contract is legal. Mr. Biesecker stated that the contract has not been fully executed; however, if or when it is then it will not be legal because the Mayor exceeded his authority. Councillor Mascari asked why the charging stations are being installed if the contract has not been fully enacted. Mr. Biesecker stated that there was a previous contract from 2014, there is now an amended and restated agreement due to the change in the project's financing. Councillor Mascari stated that he did not see a clause in the agreement that states the cars will be replaced as needed over the next 15 years. He asked if the cars will be replaced or kept for the entire 15 years. Scott Prince, General Manager for BlueIndy, stated that the cars will be rotated as needed to stay in compliance. Councillor Mascari asked if it is stated in the contract. Mr. Prince responded in the negative, stating that it is the intent of the company to rotate the vehicles.

Councillor Simpson stated that BlueIndy needs to communicate and work with the Council on this project, adding that he has received complaints from residents and business owners about the charging stations. He stated he does not think that the contract is valid because the Deputy Chief of Staff, David Rosenberg, signed it instead of the Chief of Staff or the Mayor. He stated that he does not believe that Mr. Rosenberg should have the authority to sign a contract of this magnitude. Mr. Biesecker stated that there is a provision in the local code that allows the Mayor to delegate his signature authority.

Councillor Oliver asked how it was decided that IPL would be paid \$4 million before the City receives its portion. Mr. Rosenberg stated that it was required by the Indiana Utility Regulatory Commission (IURC) in their order approving the deal and \$3.7 million that is given to IPL. Councillor Oliver asked if a guide was used to assist in the drafting of the contract. Mr. Rosenberg stated that it was a collaboration between the City and BlueIndy. He added that it is a low-cost transportation alternative in the City that compliments other services in the City.

Councillor Hunter stated that he thinks the committee should be careful with trying to kill a program that can be good for the City and moving it forward. It is one of the investments that

will bring and keep millennials in the City. He stated that the program should not be destroyed because of the manner in which it was constructed and executed.

Councillor Scales stated that they will never know whether another car sharing program would be able to offer anything equivalent to BlueIndy because they were not given the opportunity to receive bids or contact various competitive firms. She stated that she is not against the car sharing program; however, she is not pleased that other companies were not sought out before signing the contract with BlueIndy.

Councillor Clay stated that the manner in which the contract with BlueIndy was established is questionable in its business practice and indicative of the way the Administration has chosen to operate. The Council has an obligation to address concerns of how the deal with BlueIndy was conceived. He stated that the contract may be a good idea, but it is illegitimate due to the manner in which it was conceived.

Chair Moriarty Adams thanked Mr. Biesecker and Mr. Brown for their presentation.

[Clerk's note: Councillors Clay, Hunter and Mascari left at 8:41 p.m.]

Presentation by Indianapolis Metropolitan Police Department (IMPD) Administration on the hiring process of minority officers – Lloyd Crowe, IMPD Deputy Chief

Lloyd Crowe, IMPD Deputy Chief, stated that IMPD has a good relationship with the Minority Police Officers Association (MPOA). He stated that the information that will be presented in the presentation is also linked to information that will be given during the discussion on the police merit law. As such, he requested that this presentation be postponed until the merit law proposal is heard. Chair Moriarty Adams stated that she would like him to move forward with his presentation, as the merit law will be heard during a budget hearing, which is expected to take quite a bit of time.

Chief Crowe began his presentation by stating that during the Administration of former DPS Director Frank Straub, human resources (HR) was extracted from IMPD; however, Dr. Henry with the City and County HR Department handles the hiring process of IMPD officers. Dr. Henry stated that City and County HR has absorbed IMPD HR, having five FTEs that are the core IMPD HR staff that is embedded within City-County HR. Since 2008, a neutral written exam was developed to test individuals in a non-discriminatory manner, and is comprised of three components: an aptitude exam, a personality exam, and a counterproductive work behaviors exam. The recruits then have an oral assessment, which is a structured interview process before a board of trained IMPD officers who assess the manner in which the recruits respond to the questions.

Councillor Oliver asked the percentage of African American recruits in the last recruit class. Mr. Henry stated that African Americans made up 15% of the last recruit class, which calculates to 11 out of 74 recruits. Councillor Oliver asked why the number is so low if their exams are neutral to all recruits. Mr. Henry stated that HR was told to hire 50 applicants for the 11th recruit class and began creating a list of applicants once testing was completed; however, they were later

asked to hire 80 individuals, which opened the pool of potential recruits and causing a deficit within the demographics of the class. He added that in the 9th and 10th recruit classes minorities made up 35% of the recruits in each class. Councillor Oliver asked if Mr. Henry thinks the recruit process is structurally biased against African American and other minority recruits. Mr. Henry responded in the negative, stating that the testing is gender neutral and race neutral.

Councillor Simpson stated that it should have been known that increasing the class from 50 recruits to 80 recruits would affect the outcome of diversity.

Chair Moriarty Adams asked if IMPD HR has a large enough pool of applicants to pull from in order to fulfill the desired amount of 80 recruits. Mr. Henry affirmed, stating that they send out conditional offers to many applicants throughout the process; however, what they have found is that after conducting background checks, some of the applicants have criminal records, which disqualify them from moving forward in the process.

Councillor Oliver asked if HR has run across applicants that they felt belong to hate groups. Mr. Henry affirmed, stating that they have come across some individuals with the personality in the post-conditional offer stage; however, an investigation takes place to ensure that any further action is legally sound before dismissing any individuals from the class.

Chair Moriarty Adams stated that she would encourage IMPD HR to return to the committee to discuss the hiring of minority offices during the IMPD budget presentation.

With no further business pending, and upon motion duly made, the Public Safety and Criminal Justice Committee of the City-County Council was adjourned at 9:30 p.m.

Respectfully submitted,

Mary Moriarty Adams, Chair
Public Safety and Criminal Justice Committee

MMA/slp

SUMMARY OF PROPOSED CHANGES TO FIREFIGHTERS MERIT SYSTEM AND FIREFIGHTER PERSONNEL RULES ORDINANCES

SEC. 252-201 to 252-208

SEC. 252-307

This summary is provided to highlight some of the changes proposed to be made to the Firefighters Merit System and Firefighter Personnel Rules ordinances. Several of the changes are based on recommendations made by the Hiring & Promotions Efficiency Team of the Department of Public Safety; some are based on IFD Career Development Committee proposals, which were approved by the Fire Merit Board; others are based on what the Department believes are best practices for the hiring, promoting and disciplining of firefighters.

The proposed ordinance would:

- Clarify age requirements for making application to be and hiring firefighters (Sec. 252-202 (b));
- Add and restate employment preferences, including those required by state law (Sec. 252-202 (c)) and describe extent to which preferences can impact eligibility scores (Sec. 252-202 (d));
- Add language pertaining to continuity of hiring and promotion processes to enable IFD to have good and current lists for hiring and promotions (Sec. 252-202 (f) and Sec. 252-206 (d));
- Provide for the consideration of community and legal obligations when Chief is selecting candidates for hire that are not required to be in top 80% of final eligibility list (Sec. 252-203 (a));
- Modify promotion eligibility requirements to provide for increased time in grade before promotion, as recommended by IFD Career Development Committee and the Fire Merit Board (Sec. 252-206 (b));
- Add language providing a sunset date for each final promotion eligibility list (Sec. 252-206 (d));
- Add language to give the Chief the ability to make certain staff appointments in the suppression division for those with specific specialized skills and knowledge (Sec. 252-206 (g));
- Describe the process for addressing the issue of and integrating non-merit battalion commanders who are absorbed by the IFD upon a consolidation with a township or other fire department (Sec. 252-206 (i));
- Modify the disciplinary procedure to reduce certain time frames by one day to match existing general orders; allow either the firefighter or the Chief to appeal a Merit Board decision; and to make certain changes to the provision for providing a transcript to the Court if a Merit Board decision is appealed (Sec. 252-208);
- Make changes to the "Death Leave" ordinance to provide for additional bereavement leave time to firefighters in non-suppression division positions upon the death of certain close relatives. This change will make the time off provided roughly equivalent to the time off for this reason that is provided to firefighters in suppression positions (Sec. 252-307 (a)).

The Indianapolis Fire Department requests these changes to assist in its efforts to hire, promote and discipline its firefighters in the most efficient and effective manner.

MOTION TO AMEND
Proposal No. 129, 2015

Madam Chair:

I respectfully move to amend Proposal No. 129, 2015, by the substitution of the following language for that which appears in the Proposal.

Councillor

CITY-COUNTY GENERAL ORDINANCE NO. _____, 2015
PROPOSAL NO. 129, 2015

PROPOSAL FOR A GENERAL ORDINANCE to amend the Revised Code to make various changes to the hiring, promoting and disciplining of firefighters; and to change the provision for death leave for firefighters in the non-suppression division.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Section 252-201 thru Section 252-208 of the "Revised Code of the Consolidated City and County," regarding Firefighters Merit System, hereby is amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:

Sec. 252-201. Civilian fire merit board.

(a) There is hereby established a civilian fire merit board that shall be composed of four (4) members appointed by the director and two (2) members elected by the active members of the Indianapolis fire department in accordance with IC 36-8-3.5-1. Each member of the merit board shall be a registered voter who resides within the department's jurisdiction as established by section 252-102 of the Code, and no member appointed or elected to the merit board shall be a member of the department or of any other police or fire department or agency, or hold another elective or appointive office in either a city, town, township, county or state government. Members of the merit board shall serve for a term of two (2) years, and all members, either elected or appointed, shall serve during their respective terms and until their respective successor shall be appointed or elected, and qualified.

An appointed member of the merit board may be removed by the director, with or without cause, without right of hearing. If a vacancy occurs among the members of the merit board appointed by the director, the director shall appoint a replacement to serve the unexpired term. If a vacancy occurs among the members of the merit board elected by the active members of the department, a replacement shall be elected by the active members of the department in accordance with IC 36-8-3.5-8 to serve the unexpired term. A member of the merit board may be appointed or elected for successive terms.

(b) The chief shall be an ex officio member of the merit board without voting power.

(c) Three (3) members of the board shall constitute a quorum for the purpose of taking official action; however, in the event of a tie vote, the recommendation of the chief shall be deemed adopted by the board.

(d) The merit board shall establish rules for its operation. Included in such rules shall be the time and place for holding regular monthly meetings and such special meetings throughout the year as may be deemed necessary to transact its business. Each year the merit board, with the concurrence of the director, shall select from its members a president, vice-president and secretary.

(e) The merit board shall administer and supervise the merit system established by this article.

(f) The city-county council, in accordance with IC 36-3-6-6, may provide the board a monthly stipend of fifty dollars (\$50.00).

Sec. 252-202. Merit selection and procedures.

(a) Any person, including persons seeking reappointment or reinstatement, shall be appointed to the Indianapolis fire department in accordance with the merit selection and appointment procedure created by this section and such rules and regulations as may be established by the merit board in accordance with the provisions of this section. Such rules and regulations may change the order of their procedure but not the substance of the requirements established by this section. Appointment and reappointment to the department shall be made without regard to an applicant's political party preference or activity.

(b) Any individual may not submit an application, or be appointed or reappointed as a member of the department unless the individual is at least of the age of twenty-one (21) or above years of age but has not reached his or her thirty-sixth (36th) birthday and not over the age of thirty-five (35) having at. The individual must have at least a high school education or equivalent is to be eligible to make application to become a member of the department; however, and each applicant must meet minimum fitness/medical standards adopted by the department and continue to meet minimum fitness/medical standards, as a condition of employment, while serving as a member of the department. The department shall develop job-related minimum standards with the assistance of an independent consultant in order to meet applicable federal and state guidelines. All individuals appointed or reappointed to the department must establish residency in Marion County or a contiguous county at the time of such appointment or reappointment. Applicants shall not have been convicted of an offense that is a felony under Indiana law.

Applicants must obtain an application form from the personnel branch and must comply with the following additional requirements:

- (1) Applicants must pass a complete physical examination and a psychological examination in accordance with state law. The psychological examination shall be given by an individual approved by the state board of examiners in psychology or the state board of medical registration. If a written psychological examination is administered, such examination shall be approved by the state board of examiners in mental health or the state board of medical registration, in accordance with psychological examinations approved by the PERF board in consultation with the commissioner of mental health. Applicants may be required to pay up to one-half (1/2) of the costs of the required physical and psychological examinations in accordance with applicable departmental rules.
- (2) Applicants must pass a written examination to evaluate both aptitude and intellectual capacity for fire work.
- (3) Applicants must pass a job-related agility test.
- (4) Applicants shall have a structured oral interview as established by the fire merit board.

The rules and procedures for the above requirements shall be set by the chief with the approval of the merit board.

(c) The chief, with the approval of the board, shall give a preference for employment to the following, all of which must be validated by the department:

- (1) A person who has served in the military service and has received an honorable discharge from any branch of the service including the Coast Guard (as defined in IC 36-8-4-10); and any participant in the Army PaYS Program;
- (2) A person whose mother or father was a firefighter of a unit, municipal police officer, or county police officer, who died in the line of duty (as defined in IC 5-10-10-2);
- (3) A person who successfully graduated from a City of Indianapolis or Marion County high school; and/or
- (4) A person who is a resident of Marion County as of the date the person submits an application for employment.

(c)(d) The personnel branch shall prepare a list of those applicants eligible for appointment ranked in order of their total combined score. The written examination shall constitute no more than fifty (50) percent of the applicant's total eligibility score. Any combination of the preferences described in subsection (c) of this section shall constitute no more than five (5) percent of the applicant's total eligibility score. Prior to the creation of the eligibility list, the personnel branch, with approval of the merit board, shall establish the weight of each of the components of the applicant process.

(d)(e) Beginning with the applicant having the highest eligibility score on the eligibility list, the department shall conduct a background investigation into the personal history and character of the applicant. Any information indicating that the applicant has engaged in any conduct or activities that would warrant the disqualification of the applicant from appointment to the department shall be forwarded to the chairman of the personnel branch and shall be made a part of the applicant's file. The file shall be presented by the chairman of the personnel branch to the merit board, which shall determine whether such conduct or activities are such as to disqualify the applicant for appointment.

(e)(f) Final eligibility lists prepared as the result of an applicant screening process shall be in effect for two (2) years or until a new eligibility list for the next process is final, whichever occurs sooner. A new applicant screening process shall be initiated by the department no later than eighteen (18) months after a final eligibility list is certified by the merit board. The merit board shall establish procedures for the management of the final eligibility lists. Any applicant who, personally or through any other person, solicits any member of the merit board to favor his or her appointment or reinstatement to the department shall be thereby rendered ineligible for any such appointment.

Sec. 252-203. Vacancies; training academy for recruits; probationary period.

(a) The chief shall appoint as recruit trainees such applicant or applicants as are necessary to fill any vacancies that exist in the Indianapolis fire department. Eighty (80) percent of such vacancies to be appointed at one time by the chief shall be filled by taking the applicant having the highest score on the final eligibility list and proceeding down the list in order. The chief shall fill the remaining twenty (20) percent of the vacancies by selecting any person remaining on the final eligibility list. In making these selections, the chief shall consider candidates who, in the opinion of the chief, are best qualified for appointment based on such considerations as cumulative score on the merit selections procedures, and community and legal obligations of the department and the city. ~~In selecting candidates, consideration shall be given to IC 36-8-4-10.~~ Recruit trainees shall be assigned to the fire training academy for a training course prescribed by the chief with the approval of the merit board. No recruit trainee shall be assigned to regular active duty until he or she has attended and successfully completed the training course so prescribed. Failure to complete the course successfully shall result in dismissal from the department. After completing the training course, the recruit trainee shall be elevated to the probationary rank of firefighter and shall be assigned to regular active duty. The probationary period shall last for one (1) year of actual service from the date of the recruit trainee's graduation from the training academy. Each firefighter shall be evaluated monthly during this period by his or her immediate supervisor pursuant to the evaluation system provided for in this Code. The appointment of the firefighter becomes permanent when he or she has successfully completed the one-year probationary period.

(b) While an individual is in the status of recruit trainee or probationary firefighter, the chief may terminate or temporarily suspend an individual for cause, without right to any hearing before the merit board.

~~(c) The personnel branch, with the approval of the director, shall be authorized to conduct such recruiting and publicity campaigns in any county of this state as it may determine to be necessary to attract an adequate number of qualified persons to become members of the department.~~

Sec. 252-204. Retirement.

A member of the Indianapolis fire department shall be required to retire from the department consistent with state and federal guidelines or upon his or her failure to meet minimum medical/fitness standards adopted by the department. Such minimum medical/fitness standards shall be job-related and established with the assistance of an independent consultant to the department.

Sec. 252-205. Rules and regulations of the Indianapolis fire department.

(a) Within the limits of this Code, the chief, with the approval of the director, shall prescribe, adopt and put into effect such rules and regulations for the governance of the Indianapolis fire department as, from time to time, he or she deems appropriate. Within the limits of this Code, the chief, with the approval of the merit board, shall establish a classification of ranks, grades and positions in the department and shall designate the authority and responsibilities of each rank, grade and position. The chief shall have authority to assign or reassign any member of the department to serve at any department worksite, within the limits of the Code, and to perform such duties as he or she shall designate, provided such grade and assignment results in no decrease in the firefighter's merit rank, and provided the firefighter's minimum salary is commensurate with his or her merit rank. The chief shall be authorized to make maximum use of civilian employees in any position in the department so as to release firefighters to perform essential departmental functions.

(b) Consistent with the terms of section 252-206 (a), the chief, with the approval of the director, may establish a position classification system and a scale of compensation for the various firefighters in the department. The compensation so fixed shall be based on the rank held by the firefighter and the special technical competence of the job assignment of the firefighter. Any position pay granted to a firefighter shall remain in effect only while such firefighter is in such position. The scale of compensation shall be required to apply uniformly to all firefighters' merit rank and minimum salary commensurate with the rank.

Sec. 252-206. Merit promotion system.

(a) There shall be a merit promotion system that shall be administered in accordance with rules and regulations adopted by the merit board. This merit promotion system shall apply to all promotions to the ranks of lieutenant, captain and battalion chief. It shall not apply to the appointment of the chief by the director or to the appointment of assistant chief, deputy chiefs, division chiefs and shift commanders by the chief. Within the limits of this Code, the chief, with the approval of the merit board, shall set standards for promotion in conformity with the most widely approved standards of comparable fire departments and shall establish reasonable prerequisites of training, education and experience for each rank, grade and position in the department.

(b) The following eligibility requirements are established for all individuals seeking promotion within the Indianapolis fire department:

- (1) *Private to lieutenant.* To be eligible for to participate in the process for promotion to the rank of lieutenant, an individual must have completed five (5) years of continuous service as a member of the department, which time period shall include an individual's service as a full-time, paid member of a fire department that has been consolidated into the department. To be eligible for promotion to the rank of lieutenant, an individual must have completed eight (8) years of continuous service as a member of the department, which time period shall include an individual's service as a full-time, paid member of a fire department that has been consolidated into the department.

(2) *Lieutenant to captain:* To be eligible for promotion to the rank of captain, an individual must have served completed three (3) two-(2) years in the rank of lieutenant and have completed eleven (11) years of continuous service as a member of the department, which time periods shall include an individual's service as a full-time, paid member of a fire department that has been consolidated into the department.

(3) *Captain to battalion chief:* To be eligible for promotion to the rank of battalion chief, an individual must have served completed three (3) two-(2) years in the rank of captain and have completed fourteen (14) years of continuous service as a member of the department, which time periods shall include an individual's service as a full-time, paid member of a fire department that has been consolidated into the department.

In determining years of service for promotion eligibility to the next merit rank, all time served from the candidate's date of appointment shall be considered. However, if an firefighter officer is demoted, no time served in a rank prior to the demotion shall be considered in determining years of service for promotion eligibility. The merit board shall resolve any issue relating to the determination of a firefighter's years of service. A member shall be promoted only to the next highest rank.

(c) The merit board, in conjunction with the chief, shall establish process phases and procedures for use in selecting candidates for promotion to the various ranks. The board may use the services of professional consultants from outside the department to assist in developing and administering the process. The process phases shall be established in conformity with standard psychometric procedures, federal and state guidelines relating to selection methods, equal employment opportunity laws, and generally accepted standards for fire departments. Weightings of the components of the process shall be established by the department, using the services of professional consultants prior to the inception of the process with the acceptance of the merit board. The process may include, but is not limited to, such phases as a written examination, structured interviews, performance evaluations, and/or assessment center techniques, as structured to accommodate the various rank levels.

(d) Final eligibility lists prepared as the result of a promotion process shall be in effect for three (3) years or until a new eligibility list for the next process is final, whichever occurs sooner. A new promotion process shall be initiated by the department no later than twenty-four (24) months after a final promotion list is certified by the merit board.

(d)(e) Promotions shall be made by the chief with the approval of the merit board. Such promotions shall be made to position vacancies identified by the chief and designated to be filled by the chief and the director. In making final selections for promotion, the chief shall promote the candidate who, in the opinion of the chief and merit board, is best qualified for the position based on such considerations as cumulative score on the merit selections procedures, the qualifications of the candidate for promotion, and community and legal obligations of the department and the city. The merit board shall establish guidelines, policies and procedures for the administration of the promotion process, and such guidelines, policies and procedures shall be posted in all department work sites and a copy provided to the public safety committee of the city-county council prior to the inception of the process.

(e)(f) All promotions to the ranks of lieutenant, captain and battalion chief shall be made in accordance with this merit system, without regard to the candidate's political party preference or activities. Any member of the department who, personally or through any other person, solicits any member of the merit board to favor his or her promotion shall be thereby rendered ineligible for any such promotion.

(g) The Chief of Fire may make staff appointments in the suppression division for positions requiring special certifications, skills and/or training. These positions may include, but are not limited to, EMS Duty Officers and Fire Investigators. These appointments shall not be made to circumvent the department's established seniority bidding or merit systems which shall be adhered to in compliance with department general orders and labor agreements.

~~(f)(h)~~ There shall be no acting ranks in the suppression division, however, in instances in which the officer assigned to an apparatus or station is temporarily absent due to illness, vacation, training or other reason, a firefighter may be temporarily assigned to fulfill the responsibilities of the absent officer.

(i) Upon a consolidation of a fire department into the Indianapolis fire department pursuant to IC 36-3-1-6.1 that results in the addition of a new battalion, any merit captain who was acting as a battalion commander for the fire department shall be allowed to remain as an acting battalion commander if he or she participates in the next process for promotion to battalion chief and successfully completes all components of that promotion process. If the acting battalion commander chooses not to participate in or does not successfully complete all components of that promotion process, he or she shall immediately vacate the acting battalion commander position. Once a promotion list is certified by the merit board, an acting battalion commander, who has successfully completed all components of the promotion process, shall immediately vacate that position and return to the merit rank of captain, unless he or she is promoted to battalion chief in the first group of promotions made from the certified promotion list.

Sec. 252-207. Evaluations.

The chief, with the approval of the merit board and with the assistance of the personnel branch, shall establish a system for the evaluation of the performance of each member of the department. The personnel branch shall maintain a record of all evaluations of each member under this system.

Sec. 252-208. Discipline.

(a) The chief shall have the ultimate authority to discipline all members of the Indianapolis fire department. However, that authority may be delegated by the chief in accordance with provisions contained in this section. The authority of the chief to discipline shall be subject only to the firefighter's right of appeal to the fire merit board as provided herein.

(b) All disciplinary matters within the department shall be based on one (1) or more of the following infractions:

- (1) Violation of any rule, regulation, or order of the department;
- (2) Any breach of discipline;
- (3) Insubordination;
- (4) Neglect of duty;
- (5) Immoral conduct;
- (6) Conduct unbecoming a firefighter;
- (7) Substandard performance;
- (8) Violation, with the determination by the chief, of any federal, state or local law; and
- (9) Failure to cooperate or be truthful.

(c) ~~An officer~~ A firefighter may be placed on leave with pay for up to thirty (30) calendar days by the chief pending determination of final disciplinary action. Such leave with pay shall be considered a duty status and not a punishment.

(d) The delegation by the chief of the authority to discipline shall not exceed the following:

- (1) Any deputy or assistant chief may suspend any subordinate firefighter for up to a total of eighty (80) working hours, with or without pay, which suspension shall be reviewed by the disciplinary board of battalion chiefs, and ultimately reviewed by the chief. The suspended firefighter may be subject to reinstatement with pay by the chief at any time.
- (2) Any division chief may suspend any subordinate firefighter for up to a total of forty-eight (48) working hours, with or without pay, which suspension shall be reviewed by the disciplinary board of battalion chiefs, and ultimately reviewed by the chief. The suspended firefighter may be subject to reinstatement with pay by the chief at any time.
- (3) Any battalion chief may suspend any subordinate firefighter for up to a total of twenty-four (24) working hours, with or without pay, which suspension shall be reviewed by the disciplinary board of battalion chiefs, and ultimately reviewed by the chief. The suspended firefighter may be subject to reinstatement with pay by the chief at any time.

(e) Firefighters who are classified by the department as exempt executive, administrative or professional employees pursuant to the provisions of the Fair Labor Standards Act are not subject to unpaid disciplinary suspensions other than for violations of safety rules of major significance unless the suspension is for the period of an entire workweek or a specified number of full workweeks.

(f) A disciplinary board of battalion chiefs, referred to in this section as the disciplinary board, shall assist the chief in departmental disciplinary matters. The board shall be subordinate and advisory to the chief and shall consist of three (3) member officers firefighters with the permanent merit rank of battalion chief. Board members shall be selected at random and shall serve as a board for a term not to exceed six (6) months. A new board shall be impaneled every six (6) months. No battalion chief shall serve as a member of the board in consecutive six-month periods.

- (1) Following the suspension of a firefighter by the chief for a period greater than eighty (80) working hours or any suspension of a firefighter by an assistant chief, the chief shall appoint a firefighter to gather all of the pertinent facts and to investigate the event surrounding the suspension. The results of that investigation shall be reported to the chief, to the disciplinary board and to the chairman of the personnel branch for inclusion in the firefighter's personnel record. The chief, or his or her designee if the chief so determines, may cause the firefighter to be brought before the disciplinary board for a hearing based upon any charges. Alternately, the chief, in his or her discretion, may also cause the firefighter to appear directly before the merit board for a hearing.
- (2) Any firefighter subject to a hearing before the disciplinary board shall be notified in writing of the charges and of the time and date of the hearing. Such notice must be given by the board at least five (5) days prior to such hearing. In addition, the firefighter has the right to have witnesses subpoenaed by the disciplinary board to testify in his or her behalf upon forty-eight (48) hours' advance notice to the board. If the firefighter requests that witnesses be subpoenaed, he or she shall provide a list of such witnesses to the board and to the chairman of the personnel branch, who shall prepare and deliver the subpoenas on behalf of the board. All testimony at this hearing shall be under oath. Any firefighter appearing at this hearing, whether as an accused or as a witness, shall cooperate fully with the disciplinary board and answer all questions truthfully and directly. In such hearings, and pursuant to departmental policy, the firefighter shall have the right to have legal counsel.
- (3) The hearing before the disciplinary board shall be conducted in accordance with written directives of the chief. The disciplinary board, shall, by a majority vote, making a finding of guilty or not guilty and reduce it to writing. If the finding is guilty, the board shall make its recommendations for punishment. The findings and recommendations shall then be referred to the chief or his or her designee for his determination and shall be made available to the accused firefighter.
- (4) After receiving the findings and recommendations, the chief or his or her designee may, with or without hearings, either concur with the disciplinary board or may reverse the board in full or in part. After making his or her determination, the chief or his or her designee may:

- a. Suspend the firefighter without pay for up to six (6) months. If the suspension does not exceed a total of eighty (80) working hours, suspension shall be without the right of appeal to the fire merit board. That portion of any suspension exceeding a total of eighty (80) working hours may be appealed to the fire merit board within thirty (30) calendar days;
 - b. Demote the firefighter in rank; however, any demotion may be appealed to the fire merit board within thirty (30) calendar days;
 - c. Recommend to the merit board that the firefighter be terminated, in which case the merit board shall consider such a recommendation in the same manner as an appeal of a chief's determination for suspension or demotion;
 - d. Reprimand the firefighter verbally or in writing;
 - e. Reinstate with pay any firefighter who has been previously suspended without pay.
- (5) A copy of the findings of fact and recommendations of the disciplinary board as well as the chief's determination shall be made a permanent part of the subject firefighter's personnel record. A copy of all of these findings of fact and recommendations as well as the chief's determination shall also be referred to the director within ~~fifteen (15)~~ fourteen (14) days.
- (g) Appeals to the merit board shall be handled in the following manner:
- (1) Any member of the department may appeal the following determinations to the fire merit board within thirty (30) calendar days of such determination:
 - a. That portion of any suspension without pay exceeding eighty (80) working hours;
 - b. Any demotion in rank.
 - (2) The hearing before the merit board shall be an administrative hearing, shall be de novo and shall be a hearing of record. The evidence before the merit board shall consist of the findings of fact and recommendations of the disciplinary board of battalion chiefs if such disciplinary board is convened, the written charges and the determination of the fire chief upon those charges, and any other evidence requested by the merit board, presented by the aggrieved firefighter, or presented by the chief.
 - (3) Any firefighter appealing any decision of the chief shall be given notice at least ~~fifteen (15)~~ fourteen (14) calendar days prior to the hearing before the merit board.
 - (4) The appealing firefighter may be represented by legal counsel before the merit board, and the chief shall be represented by the corporation counsel or his or her designee.
 - (5) The merit board may fully or partially affirm or completely reverse any portion of the chief's determination that is appealable. In the case of a demotion, the merit board may demote a firefighter only one (1) permanent rank at any one (1) time. The merit board may order any firefighter reinstated with pay for any appealable suspension. In addition, the merit board may remand the action for further review by the chief.
 - (6) After hearing the evidence, the merit board shall make a finding by majority voice and reduce its findings and decision to writing. A copy of the findings and decision shall be forwarded to the firefighter in question and to the director and shall become a permanent part of the firefighter's personnel record.
- (h) For the purpose of all hearings before the chief, the disciplinary board of battalion chiefs, and the merit board, each respectively shall have subpoena power enforceable by the circuit or superior court.

(i) ~~Any member of the department~~ Either party may, following a decision of the merit board, file a verified petition in the superior or circuit court of the county for a review of the decision. The petition for review shall be filed within thirty (30) days of the written decision of the merit board. ~~The consolidated city shall be the sole defendant in the petition. Within thirty (30) calendar days after receipt of the summons the filing of the petition for review, the city petitioner shall file a true~~ shall cause the merit board to file and complete copy of the transcript of the hearing, and the board's written findings with the court. Upon request, the board shall prepare the transcript for the petitioner. The board shall charge the petitioner the reasonable cost of preparing the transcript for transmittal to the court. An extension of time in which to file the transcript shall be granted by the court for good cause shown. Inability to obtain the transcript from the board within the time permitted by this section is good cause. Failure to file the transcript within the time permitted by this subsection, including any extension period ordered by the court, is cause for dismissal of the petition for review by the court, on its own motion, or on petition by the City of Indianapolis. The court, without jury, shall review the record and render its decision as in other administrative reviews. The clerk of the court shall send a copy of the court's decision to the department of public safety and the appealing firefighter. Either party may appeal the decision of the court.

SECTION 2. Section 252-307 of the "Revised Code of the Consolidated City and County," regarding Firefighter Death Leave, hereby is amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:

Sec. 252-307. Death leave.

(a) *Firefighters in non-suppression division.* Upon the death of a parent, child or spouse, an active firefighter assigned to the non-suppression division will receive a maximum of five (5) eight (8)-hour duty days leave with pay. Upon the death of member of the immediate family (consisting of a spouse, mother, father, son, daughter, a brother, sister, stepmother, stepfather, stepson, stepdaughter, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, grandmother, grandfather, grandson and granddaughter, or other relative who was residing with the firefighter), a firefighter will receive a maximum of three (3) working days leave with pay. The chief has discretion to grant three (3) eight (8)-hour duty days for leave to be charged against any earned leave time for a death of someone other than those listed above.

(b) *Firefighters in suppression division.*

- (1) Upon the death of a parent, child or spouse, an active firefighter assigned to the suppression division will receive a maximum of two (2) twenty-four-hour duty days off with pay.
- (2) Upon the death of a brother, sister, stepmother, stepfather, stepson, stepdaughter, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, grandfather, grandmother, grandson, granddaughter, or other relative who was residing with the firefighter, a firefighter assigned to the suppression division shall receive a maximum of one (1) twenty-four-hour duty day off with pay. The chief has the discretion to grant one (1) day for leave to be charged against any earned leave time for a death of someone other than those listed above.

(c) *General.* Documentation of the death, such as a death certificate or article, may be required from the firefighter. Additional time off to be charged to earned leave time if available, or without pay, may be granted at the discretion of the chief.

SECTION 3. The expressed or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.

SECTION 4. Should any provision (section, paragraph, sentence, clause, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid

provision or provisions, be given the effect intended by the Council in adopting this ordinance. To this end the provisions of this ordinance are severable.

SECTION 5. This ordinance shall be in effect from and after its passage by the Council and compliance with Ind. Code § 36-3-4-14.

**MOTION TO AMEND
Proposal No. 219, 2015**

Exhibit C

Madam Chair:

I move to amend Proposal No. 219, 2015, including the digest, noted in the following highlighted portions, by deleting the language that is stricken-through and adding the language that is underlined, to read as follows:

Councilor Mascari

CITY-COUNTY FISCAL ORDINANCE NO. _____, 2015

PROPOSAL FOR A FISCAL ORDINANCE amending the City-County Annual Budget for 2015 (City-County Fiscal Ordinance No. 258, 2014) by appropriating a total of ~~\$4,700,000~~ \$2,950,000 for purposes of the Department of Public Safety and instructing the Controller to make a transfer of ~~\$6,800,000~~ from the Fiscal Stability Fund to the IMPD General Fund.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. To provide for expenditures, the necessity for which has arisen since its adoption, the City-County Annual Budget for 2015 is hereby amended by the increases and decreases hereinafter stated for purposes of the Department of Public Safety.

SECTION 2. The ~~Department of Public Safety, Indianapolis Metropolitan Police Department,~~ appropriates ~~\$4,700,000~~ \$2,950,000 in the City Cumulative Capital Fund to change the funding mechanism of Fiscal Ordinance 8, 2015. The following changes to appropriations are hereby approved:

| <u>FUND</u> | <u>CHAR 1</u> | <u>CHAR 2</u> | <u>CHAR 3</u> | <u>CHAR 4</u> | <u>TOTAL</u> |
|------------------------------|---------------|---------------|---------------|---------------|--------------------------------------|
| City Cumulative Capital Fund | | | 1,750,000 | 2,950,000 | <u>4,700,000</u> <u>2,950,000</u> |

SECTION 3. Pursuant to Section 135-771 (b) of the Revised Code the Controller is hereby instructed to transfer \$6,800,000 from the Fiscal Stability Fund to the IMPD General Fund immediately upon passage of this ordinance.

~~The Department of Public Safety, Indianapolis Metropolitan Police Department, decreases appropriation of \$4,700,000 in the IMPD General Fund to change the funding mechanism of Fiscal Ordinance 8, 2015. The following changes to appropriations are hereby approved:~~

| <u>FUND</u> | <u>CHAR 1</u> | <u>CHAR 2</u> | <u>CHAR 3</u> | <u>CHAR 4</u> | <u>TOTAL</u> |
|--------------|---------------|---------------|------------------------|------------------------|------------------------|
| IMPD General | | | (1,750,000) | (2,950,000) | (4,700,000) |

SECTION 4. Upon approval of this, and other pending approvals, the 2014 year end and projected 2015 year end fund balances are as follows:

| | Projected 2014 year-end balance | Projected 2015 year-end balance |
|---------------------------------------|---------------------------------|---------------------------------|
| <u>Fiscal Stability Fund</u> | <u>65,200,000</u> | <u>71,200,000</u> |
| City Cumulative Capital Fund 45602 | 8,768,591 | 4,751,043 <u>6,501,043</u> |

| | | |
|--------------------|-----------|------------------------|
| IMPD General 15601 | 6,091,508 | 2,283,668 4,383,668 |
|--------------------|-----------|------------------------|

SECTION 5. This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

The foregoing was passed by the City-County Council this ____ day of _____, 2015, at ____ p.m.

ATTEST:

Maggie A. Lewis
President, City-County Council

NaTrina DeBow
Clerk, City-County Council

Presented by me to the Mayor this ____ day of _____, 2015, at 10:00 a.m.

NaTrina DeBow
Clerk, City-County Council

Approved and signed by me this ____ day of _____, 2015.

Gregory A. Ballard, Mayor

**MOTION TO AMEND
Proposal No. 219, 2015**

Madam Chair:

I move to amend Proposal No. 219, 2015, including the digest, noted in the following highlighted portions, by deleting the language that is stricken-through and adding the language that is underlined, to read as follows:

Councilor Mascari

CITY-COUNTY FISCAL ORDINANCE NO. _____, 2015

PROPOSAL FOR A FISCAL ORDINANCE amending the City-County Annual Budget for 2015 (City-County Fiscal Ordinance No. 258, 2014) ~~by appropriating a total of \$4,700,000 for purposes of the Department of Public Safety by instructing the Controller to make a transfer of \$6,800,000 from the Fiscal Stability Fund to the IMPD General Fund.~~

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

~~SECTION 1. To provide for expenditures, the necessity for which has arisen since its adoption, the City-County Annual Budget for 2015 is hereby amended by the increases and decreases hereinafter stated for purposes of the Department of Public Safety.~~

~~SECTION 2. The Department of Public Safety, Indianapolis Metropolitan Police Department, appropriates \$4,700,000 in the City Cumulative Capital Fund to change the funding mechanism of Fiscal Ordinance 8, 2015. The following changes to appropriations are hereby approved:~~

| <u>FUND</u> | <u>CHAR 1</u> | <u>CHAR 2</u> | <u>CHAR 3</u> | <u>CHAR 4</u> | <u>TOTAL</u> |
|------------------------------|---------------|---------------|---------------|---------------|------------------|
| City Cumulative Capital Fund | | | 4,750,000 | 2,950,000 | <u>4,700,000</u> |

~~SECTION 1 3. Pursuant to Section 135-771 (b) of the Revised Code the Controller is hereby instructed to transfer \$6,800,000 from the Fiscal Stability Fund to the IMPD General Fund immediately upon passage of this ordinance.~~

~~The Department of Public Safety, Indianapolis Metropolitan Police Department, decreases appropriation of \$4,700,000 in the IMPD General Fund to change the funding mechanism of Fiscal Ordinance 8, 2015. The following changes to appropriations are hereby approved:~~

| <u>FUND</u> | <u>CHAR 1</u> | <u>CHAR 2</u> | <u>CHAR 3</u> | <u>CHAR 4</u> | <u>TOTAL</u> |
|--------------|---------------|---------------|---------------|---------------|--------------|
| IMPD General | | | (1,750,000) | (2,950,000) | (4,700,000) |

SECTION 2 4. Upon approval of this, and other pending approvals, the 2014 year end and projected 2015 year end fund balances are as follows:

| | Projected 2014 year-end balance | Projected 2015 year-end balance |
|---|---------------------------------|---------------------------------|
| <u>Fiscal Stability Fund</u> | <u>65,200,000</u> | <u>71,200,000</u> |
| <u>City Cumulative Capital Fund</u> <u>45602</u> | <u>8,768,594</u> | <u>4,751,043</u> |

| | | |
|--------------------|-----------|-----------------------------------|
| IMPD General 15601 | 6,091,508 | 2,283,668 4,383,668 |
|--------------------|-----------|-----------------------------------|

SECTION 3 5. This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

The foregoing was passed by the City-County Council this _____ day of _____, 2015, at _____ p.m.

ATTEST:

Maggie A. Lewis
President, City-County Council

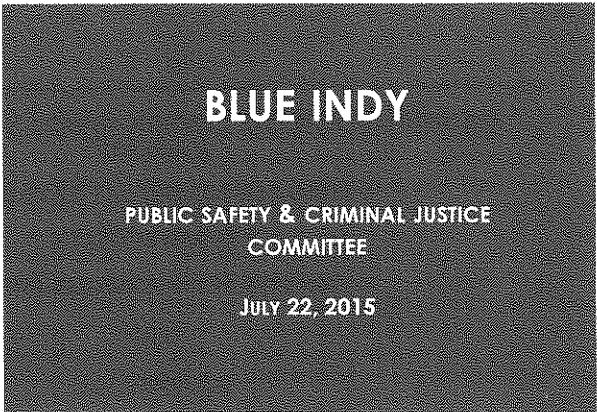

NaTrina DeBow
Clerk, City-County Council

Presented by me to the Mayor this _____ day of _____, 2015, at 10:00 a.m.

NaTrina DeBow
Clerk, City-County Council

Approved and signed by me this _____ day of _____, 2015.

Gregory A. Ballard, Mayor



BLUE INDY

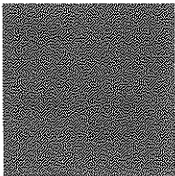
PUBLIC SAFETY & CRIMINAL JUSTICE
COMMITTEE

JULY 22, 2015

Fred Biesecker, General Counsel

Bart Brown, Chief Financial Officer

LEGAL STANDARD



- "[T]he long established rule in this jurisdiction is that municipal officers have no power to enter contracts except where that authority is expressly granted by statute; and municipal officers must pursue and exercise such authority in strict compliance with the mode prescribed by statute. Contracts made by officers without following the prescribed mode are void and unenforceable." City of Gary v. Major, 822 N.E.2d 165, 171 n.3 (Ind. 2005)

**AMENDED AND RESTATED ELECTRIC VEHICLE SHARING CONCESSION
AGREEMENT**

DATED AS OF THE 31ST DAY OF MARCH, 2015

BY AND BETWEEN

THE CITY OF INDIANAPOLIS, INDIANA

AND

BLUEINDY, LLC.

Section 2.01. Exclusive Right.

(a) The City hereby grants to the Company the exclusive right to provide a car-sharing service on city-owned property and city-controlled public rights of way (the "Exclusive Right").

(b) By virtue of the Exclusive Right, the Company shall be permitted to use (and to allow its customers to use) the Locations for the purpose of:

- (i) Parking Vehicles;
- (ii) Offering the use of Charging Stations to private owners of EVs;
- (iii) Establishing and operating Kiosks, Charging Stations and such other associated technology and items as may be necessary or appropriate for the proper operation of the Business;
- (iv) Advertising and marketing, as provided in Article V; and
- (v) Doing such other acts and things as are reasonably related to the Business.

(c) The City agrees that, during the Term, the City shall not grant any lease, license, easement or other right similar to the Exclusive Right to any other Person, nor enter into any Contract with any Person for any purpose similar to the purpose of this Agreement anywhere else within Marion County, Indiana.

A municipality has no power to grant to a public service corporation an exclusive franchise to use the streets, unless the power not only to grant a franchise but also to grant an exclusive franchise has been delegated to it by the legislature either expressly or by necessary implication, and if inferred from other powers, it is not enough that the authority is convenient to them, but it must be indispensable to them. The general power to regulate streets is insufficient to authorize the granting of an exclusive franchise, as is the statutory authority to grant the use of the streets for such time and on such terms as the municipality may deem proper.

12 McQuillin, *The Law of Municipal Corporations* § 34:31 (3d ed. 1995) (emphasis added)

Section 4.01. Term.

(a) The initial term of this Agreement shall commence on the Effective Date and shall terminate on the fifteen (15) year anniversary of the Public Opening (the "Initial Term").

(b) The Initial Term shall automatically renew for successive periods of two (2) years (each, a "Renewal Term," collectively with the Initial Term, the "Term") unless either the City or the Company provides written notice to the other of its intention not to renew at least ninety (90) days prior to the expiration of the current Term.

Section 2.03. Services by the Company. During the Term, the Company agrees to provide the following Services:

(a) Rentals of the Vehicles & Charging Stations.

(i) The Company shall provide, manage, operate, and maintain rental agreements for Vehicles in a quantity anticipated to be five hundred (500) and shall provide, manage, operate, and maintain Charging Stations in a quantity anticipated to be one thousand (1,000) at approximately two hundred (200) Locations by the time of full implementation of the Services, but the total number of Vehicles and Charging Stations deployed for use by customers of the Services shall be set at the sole discretion of the Company; *provided however*, the following minimum requirements, notwithstanding any other provision in this Agreement, shall be performed by the Company during the Term:

- (A) There shall be twenty-five (25) Locations deployed for use by customers at the time of the Public Opening;
- (B) There shall be at least 0.4 Vehicles deployed for each Charging Station deployed;
- (C) There shall be no fewer than one hundred and twenty five (125) Vehicles, fifty (50) Locations, and two hundred and fifty (250) Charging Stations deployed by December 31, 2016 for use by customers during the Term.

Section 2.05. Locations.

(c) The City shall make available up to one thousand (1,000) parking spaces within up to two hundred (200) sites within Indianapolis, Indiana to be used as Locations for the Service at no charge to the Company.

Section 2.04. Implementation.

(c) City Obligations. During the implementation, the City agrees to perform and complete, at its own cost and expense, or cause its subcontractors to perform and complete, the following work required for preparation of the Phase One Locations and Subsequent Phase Locations, as applicable, for use by the Company in the Business (the "City's Work"):

- (i) For Locations on city-owned property or city-controlled public right of way:
 - (A) Repairing all roads and sidewalks at or near the Locations;
 - (B) Providing all necessary signage and pavement marking in compliance with the Law and city signage policies and standards and as otherwise set forth in the Installation Requirements;
 - (C) Prohibiting parking by vehicles other than the Vehicles or vehicles whose customers have subscribed to the Services to charge a privately owned EV on the Charging Stations (including appropriate signage prohibiting such parking);
- (ii) Preparing drawings identifying the proposed location of each Location Fixture depicting the specific placement of Location Fixtures in compliance with existing setbacks and easements and all applicable laws, such as but not limited to, local zoning requirements; historic district requirements; and the Americans with Disabilities Act;
- (iii) Participating in on-site surveys of each proposed Location;
- (iv) Installing the power conduits listed in the Installation Requirements for each Location subject to 2.04(d)(i);
- (v) Cause IPL to install the electric service for each Location in accordance with Exhibit I subject to 2.04(d)(i);
- (vi) Expediting and obtaining all permits from the City necessary for the work performed by the Parties to the extent permitted by Law; and
- (vii) Participating in Location assessments after a Notice to Proceed is issued.

The City's Work shall conform to the Installation Requirements and be in accordance with each Notice to Proceed not rejected by the City as permitted by this Agreement.

Section 5.07. Taxes.

(b) City/County Taxation. Except as provided in Section 2.06, nothing in this Agreement shall be construed to exempt the Company from any Taxes from the City or Marion County, Indiana, except as provided as follows (hereinafter collectively "Exempt Taxes"):

- (i) Property Taxes on Real Property. In no event shall the Company be required to pay local property taxes on real property with respect to the Locations that are located on city-owned property or city-controlled public right of way.
- (ii) Parking Taxes. In no event shall the Company be required to pay Parking Taxes with respect to the Locations or for any costs associated with the City's removal of its parking meters to accommodate Locations.
- (iii) City Fees. Fees charged by the City's Department of Code Enforcement for permits and licenses shall be waived where possible or otherwise reimbursed to the Company by the City.
- (iv) Company-Specific Taxes. In no event shall the Company be subjected to any Tax imposed by the City or Marion County, Indiana, that has the effect of applying only to the Company or its Business.

Section 11.01. In consideration for the reduced scope of the City's Work and IPL's Work included in this restated Agreement and the higher costs to the Company resulting from the IURC Order, the City agrees to:

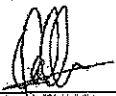
- (a) Execute the Escrow Agreement in Exhibit H without change before May 15, 2015.
- (b) On or before September 1, 2015, deposit Six Million Dollars (\$6,000,000) into the Escrow Account.
- (c) Reduce its share of profit sharing in years 6 to 15 as set forth in Section 5.02.i.
- (d) Entitle the Company to the recovery of reasonable attorneys' fees and costs for any Proceeding instituted to enforce this Section 11.01.

Section 5.02. Profit Sharing & Rate Mitigation.

(i) Temporary contribution of the City's share of the Profit Share. As part of the New Financial Structure described in Article XI, The City agrees that starting on the 6th anniversary of the Effective Date, its share (if any) of the Profit Share payable by the Company, after payment of IPL's share as set forth in Section 5.02.f, will be divided in half until the corresponding cumulative amount represented by such contribution reaches \$1,000,000.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.


"COMPANY"
BLUEINDY, LLC

By: 
Printed: Herve Muller
Title: President

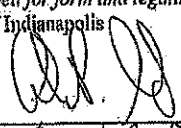
Approved for Availability of Funding
City of Indianapolis

By: _____
Printed: _____
Title: Controller

"CITY"
CITY OF INDIANAPOLIS

By: 
Printed: David Roseberry
Title: Deputy Chief of Staff

Approved for form and legality
City of Indianapolis

By: 
Printed: Andrew R. Stewart
Title: 3-31-15

LOCAL CODE: FRANCHISE REQUIREMENTS

Sec. 645-211. - Franchise required.

Except as provided in section 645-212, no person or entity shall indefinitely or permanently occupy a public right-of-way, or use facilities within the public rights-of-way owned by others under lease or other arrangement with such owner, without first obtaining a public right-of-way user franchise granted by the consolidated city as provided in this Article II of this chapter. A person or entity shall be deemed to "indefinitely and permanently" occupy a public right-of-way if such person or entity leases or otherwise arranges to use facilities in the public rights-of-way for a term of one (1) year or more.

Sec. 645-221. - Authority to grant franchises.

The city-county council is hereby authorized to grant one (1) or more nonexclusive franchising contracts conveying the right to construct, operate, and maintain privately owned facilities occupying the public rights-of-way.

LOCAL CODE SEC. 621-116

Sec. 621-116. - Parking for certain purposes prohibited at all times.

(b) *Using vehicle for advertising.* No person shall park a vehicle on any street or alley in the city for the primary purpose of displaying advertising of any nature.

CITY-COUNTY SPECIAL ORDINANCE NO. 3, 2000 Proposal No. 32, 2000

A SPECIAL ORDINANCE approving and confirming an agreement for a franchise for a health care transportation system granted by the Consolidated City of Indianapolis, Indiana, to Clarian Health Partners, Inc.

WHEREAS, Division 2 of Article II of Chapter 645 of the Revised Code of the Consolidated City and County establishes procedures for the granting of franchises for privately-owned facilities to occupy the public rights-of-way; and

WHEREAS, Clarian Health Partners, Inc. filed an application for a Health Care Transportation System franchise with the Department of Capital Asset Management pursuant to Sec. 645-222 of the Code; and

WHEREAS, based upon its review of the franchise application, the Department of Capital Asset Management filed with the Clerk of the Council its recommendation that a franchise should be granted; and

WHEREAS, the Council's Committee of Rules and Public Policy held a public hearing on the recommendation of the Department of Capital Asset Management with respect to such application on November 23, 1999; and

WHEREAS, such committee determined that a franchise should be granted and directed the negotiation of a franchise contract; and

WHEREAS, Clarian Health Partners, Inc., filed an Amended and Restated Application for Health Care Transportation Franchise with the Department of Capital Asset Management on February 28, 2000; and

WHEREAS, based upon its review of the Amended and Restated Franchise Application, the Department of Capital Asset Management filed with the Clerk of the Council, on March 24, 2000, its recommendation that a franchise should be granted; and

WHEREAS, the Council's Committee of Rules and Public Policy held a public hearing on the recommendation of the Department of Capital Asset Management with respect to such Amended and Restated Application on April 11, 2000; and

WHEREAS, such Committee ratified and confirmed that a franchise should be granted to Clarian Health Partners, Inc., and approved the negotiated franchise contract; and

WHEREAS, such franchise contract is submitted by such Committee herewith for action by the Council; now, therefore:

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The City-County Council hereby approves and confirms the granting of a franchise for a Health Care Transportation System to Clarian Health Partners, Inc. as set forth in a Health Care Transportation System Franchise Agreement, a copy of which agreement is submitted herewith and shall be filed in the City-County Council's permanent records of this ordinance and be available for public inspection.

SECTION 2. The City-County Council authorizes the Mayor and Director of the Department of Capital Asset Management to execute this franchise agreement on behalf of the Consolidated City of Indianapolis.

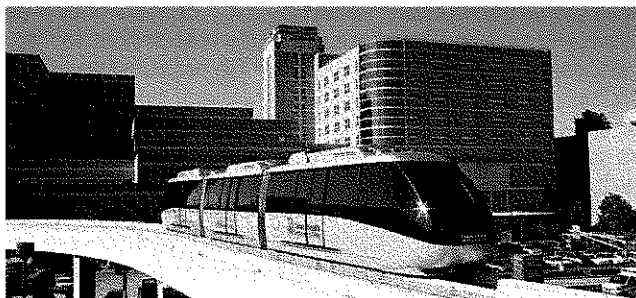
SECTION 3. This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

The foregoing was passed by the City-County Council this 24th day of April, 2000, at 8:24 p.m.

CLARIAN PEOPLE MOVER FRANCHISE AGREEMENT

Initial Term: 25 years

Franchise Fee: \$20,000 up front plus annual franchise fee of \$5.00 per foot.



LOCAL CODE: SECTIONS 645-572, 576

Sec. 645-572. - Jurisdiction; all encroachments regulated.

(c) Notwithstanding the preceding portions of this section, an encroachment of more than one (1) year may not be licensed if said encroachment is subject to the grant of a franchise as authorized elsewhere in this Code or is the subject matter of a lease or operating agreement between the city and a third party.

Sec. 645-576. - Conditions of license.

No property right vests in the holder of an encroachment license through the granting of the encroachment license, irrespective of the length of the term of the license. The holder of the encroachment license has no property right to the continued existence of the encroachment license or the renewal of the license.

LOCAL CODE: SECTION 645-583**Sec. 645-583. - Termination of encroachment license; removal of an encroachment.**

(a) The bureau of license and permit services may at any time terminate an encroachment license, whether the encroachment is based on a written document issued by such bureau or allowed without documentation. The owner shall be responsible for removing such an encroachment. The city shall not be responsible for any costs related to the termination of the encroachment privilege; for example, the city shall not be responsible for the cost of removal of the encroachment or any diminution of value of the owner's property associated with the removal. Such department shall allow the owner sixty (60) days to remove the encroachment. However, if the terms of the encroachment license document specify a shorter or longer period removal time, the specified time shall be allowed for removal.

Section 4.02. Rights of Termination. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated at any time, as follows:

- (a) By mutual written agreement of the City and the Company;
- (b) By the Company for convenience at any time after the five (5) year anniversary of the Effective Date by providing the City one-hundred and eighty (180) days prior written notice;
- (c) By the City, if there has been a material default or breach by the Company of any of the representations, warranties, covenants or agreements of the Company contained in this Agreement and such default or breach shall not have been waived by the City or cured by the Company within one-hundred and eighty (180) days after receipt by the Company of written notice from the City specifying in reasonable detail the nature of such default or breach (or reasonable efforts to cure such default or breach have not been commenced, if such default or breach is not reasonably capable of being cured within such one hundred and eighty (180) day period); The City shall provide the Guarantor a copy of any notice to the Company under Section 4.02(c);

BLUE INDY CONTRACT



- Profit sharing--If and when the company achieves "profitability," defined as the point in time when the company's cumulative net profit from the effective date is positive, then the company pays 15% of its annual net profit to the city and IPL; however, the first \$4 million goes exclusively to IPL.
- Effect on Park Indy contract--Section 7.4 of the Park Indy contract provides that the city may permanently remove up to 200 metered parking spaces without triggering a "compensation event"; after that, the city must pay the present value of the lost parking revenue and the lost parking violations revenue.

